



POLICE DEPARTMENT

May 5, 2023

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Jamarr Burnett :

Tax Registry No. 954585 :

Housing PSA 2 :
-----X

Case No.

2022-24671

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Theresa Freitas, Esq.
Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

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To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Jamarr Burnett, on or about June 4, 2020, at approximately 2030, while assigned to PSA 2 and on duty, in the vicinity of 375 Blake Avenue, Kings County, used offensive language in that he made remarks to Ms. Motique Graves based upon Mr. Malik Tyquan Graves' race by stating, in sum and substance, "I would have shot that little nigger myself." (*As amended*)

P.G. 203-10, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Police Officer Jamarr Burnett, on or about January 5, 2021, at approximately 1223, while assigned to PSA 2 and on duty, inside 100 Church Street, New York County, provided a misleading official statement to the Civilian Complaint Review Board, in that he stated that he did not recall the day in question and did not recall a police shooting involving his precinct just two days before. (*As amended*)

A.G. 304-10

MISLEADING STATEMENTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 30, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB called Motique Graves and Shauntay Watkins as witnesses, and introduced video footage retrieved from a NYCHA camera. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Not Guilty.

ANALYSIS

On June 4, 2020, a memorial was held in the courtyard of the Van Dyke Houses, in front of 375 Blake Avenue in Brooklyn. Those who attended were celebrating the life of Malik Tyquan Graves, who had been shot and killed by police officers during an incident two days earlier. One of those in attendance was Graves' sister, Motique. At the time of the memorial,

several police officers were gathered at the end of the courtyard path where it intersects with the sidewalk. It is alleged that as Motique Graves was walking from the location of the memorial to the sidewalk, Respondent used offensive language, in that he stated to Ms. Graves, in sum and substance, "I would have shot that little nigger myself." Respondent also faces a separate charge for making misleading statements during his official CCRB interview seven months later when he stated that he could not recall this incident.

Ms. Graves testified that she does not remember too much of what occurred on June 4, 2020. She stated that she was walking along the courtyard path toward the sidewalk talking with a friend, whose name she could not recall, when she observed about eight or nine police officers standing at the end of the path where it meets the sidewalk. As they were walking past the officers, Ms. Graves said to her friend that she did not understand why all the officers needed to be there, and wondered out loud why they couldn't just let them mourn in peace. According to Ms. Graves, Respondent, an African-American police officer who was standing about six feet away, then stated, "If I was there, I would have killed that nigger myself." Ms. Graves was upset at the comment, turned back to the officer, and said, "Excuse me?" Somebody came and pulled her away, and a higher ranking officer came and removed Respondent from the scene. (Tr. 16-20, 23-24, 27, 35, 47)

Ms. Graves acknowledged that she did not want the police present when she and her family and friends were having the memorial for her brother. She testified that she was angry at the police for what they had done to her brother, and believed that they were not looking out for the community and were solely to blame for her brother's death. Ms. Graves has a pending lawsuit against Respondent in connection with this matter, as well as against the officers involved in the shooting of her brother, though she stated that she respects the police. She was

not, however, the individual who initiated this complaint with the CCRB; the complaint was filed by her cousin, Shauntay Watkins. (Tr. 28, 30-32, 36, 40, 50)

Ms. Watkins testified that she was talking on her phone as she walked on the path, about four or five feet behind her cousin, when she heard Respondent say to Ms. Graves, “He shouldn’t have been shooting at cops. I would have shot that little nigger myself.” There were approximately nine police officers in the area, but Ms. Watkins claimed that she specifically observed Respondent make this comment in a normal tone of voice. She then heard Ms. Graves respond, “Let us mourn in peace. He’s already gone.” Ms. Watkins claimed that Respondent, who had been leaning against the fence, stood erect with his hands by his waistline, and so she said to Respondent, “I apologize, please excuse her.” She lowered her mask, kept pleading with Respondent to “excuse her,” and steered Ms. Graves away from there, since the situation was highly emotional and tense. Ms. Graves was crying hysterically, and was very upset. According to Ms. Watkins, another officer took Respondent aside about two-to-three minutes later, and they walked away from the location. Ms. Graves never approached Respondent to obtain his name or shield number. (Tr. 58-62, 68-71)

Video footage of the interaction was introduced into evidence (CCRB Ex. 1), along with several subclips taken from the original video (CCRB Exs. 1A-1D). In the footage, which has no audio, Ms. Graves can be seen walking down the path, past a group of police officers, toward the sidewalk. (CCRB Ex. 1C at 0:21) After she passes the officers and reaches the sidewalk, she turns back in their direction. At 0:44, Ms. Watkins can be seen walking down the same path; she passes the officers and steers Ms. Graves away from them. The video footage will be discussed in further detail later in this decision.

The CCRB also introduced into evidence a transcript of Respondent's official interview with the CCRB on January 5, 2021. (CCRB Ex. 2) In that interview, when asked about the events of June 4, 2020, Respondent answered, "I don't remember that incident at all." The CCRB investigator referred to the police-involved shooting that had occurred two days prior to the memorial, but Respondent still could not recall this incident. After the investigator played him the video footage from the NYCHA camera, Respondent was able to identify himself and his sergeant on the video, but still stated that he did not recall the events of that day. (CCRB Ex. 2 at 6-8, 13-14)

Respondent testified that during the time period of this incident, he worked 13 consecutive days, doing 12-hour tours, in connection with the protests throughout the city. On June 4, 2020, he was assigned as the operator for Sergeant Lisandro Pena; together they responded to multiple jobs throughout Brooklyn. Respondent stated that he has no specific recollection of this incident, or being in the vicinity of the Van Dyke Houses that day; however, from the video footage showing Respondent and his sergeant walking back to their RMP (CCRB Ex. 1 at 8:27:58), he confirmed that he was, in fact, present at the location. Respondent insisted that he never made the comment to Ms. Graves that has been attributed to him; he stated that as an African American male, he would not use the word "nigger," and that his dad, a former police officer with the NYPD, taught him better than that. From watching the video, it appeared to Respondent that he and his sergeant showed up at the memorial, observed there was nothing going on, and so they left. (Tr. 82-83, 91-94, 98, 101, 103-04, 107, 114-15)

According to Respondent, during his time with the Department he has been to the location of this incident over a thousand times. He also has been assigned to be part of the police presence at hundreds of memorials, and there was nothing unusual about June 4th that makes him

remember this one. Respondent testified that when he was interviewed by the CCRB seven months later, he could not recall anything about the incident, and answered the questions accordingly. He had no involvement in the shooting of Ms. Graves' brother on June 2nd, so the reference to that did not jog his memory. Even though Respondent did see himself in the video footage, he still could not recall this incident. (Tr. 84-85, 89-90, 96-98, 101-03, 108-14)

Specification 1 charges Respondent with making an offensive remark to Ms. Graves, in that he stated, in sum and substance, "I would have shot that little nigger myself." At issue is not so much whether an offensive comment was directed at Ms. Graves by one of the officers, but rather, whether the credible evidence has proven that Respondent was, in fact, the officer who actually made the remark. There was no indication from the evidence that at the time of the incident, either Ms. Graves or Ms. Watkins obtained the name or shield number of the officer making the offending comment, which would have provided clarity on the issue of identification.

Ms. Graves testified that she observed Respondent make this statement to her as she was walking down the courtyard pathway toward the sidewalk. On the one hand, Ms. Graves did appear for trial, and answered questions about this painful time in her life. However, she began her testimony by noting that she does not recall much about June 4th, and she did not file a complaint with the CCRB regarding this incident; that complaint was initiated by her cousin, Ms. Watkins. Ms. Graves came across as less than forthcoming in her testimony, and not very detailed. She confirmed that she has a lawsuit pending against Respondent in connection with this matter. Additionally, Ms. Graves was understandably angry about the shooting of her brother, and she stated that she believes the police were not looking out for the community. Although Ms. Graves identified Respondent in court as the officer who made the offending comment, I was not persuaded as to her reliability as a witness.

With that in mind, the Court looks to whether there was reliable corroboration for Ms. Graves' identification of Respondent. Ms. Watkins, the cousin of Ms. Graves, claimed that she was walking down the courtyard pathway, four or five feet behind her cousin, when she heard Respondent make the remark in question. She testified that she heard Ms. Graves tell the officers to let them mourn in peace, at which point Ms. Watkins kept pleading with Respondent to excuse Ms. Graves, and steered her away from the officers. Several minutes later, another officer took Respondent aside and they left the location.

However, the video footage in evidence does not support Ms. Watkins' testimony on many key points. For instance, in CCRB Ex. 1C, Ms. Graves and a friend can be seen walking down the path at 0:21. According to Ms. Graves, the offensive comment was made as she was walking past the officers, after which she turned back to them. From 0:27-0:36, Ms. Graves already appears to be reacting to whatever was said, as she has turned back toward the officers and is speaking to them. Ms. Watkins, meanwhile, is not even visible at this point; indeed, she does not appear until 0:44, when she is seen walking down the pathway while she is speaking on her phone. As such, even if one of the officers did, in fact, make an offensive comment to Ms. Graves as she was walking past them, I am not persuaded by the credible evidence that Ms. Watkins was close enough to actually hear what was being said.

Additionally, in the video footage Ms. Watkins does not appear to react at all to the officers, or engage them in any way, as she walks past them on the pathway. Rather, she goes straight to Ms. Graves at 0:48, and without breaking stride walks away with her cousin. At 0:51, Ms. Watkins looks back toward the police officers for a split-second, then turns back away, and continues to talk on her phone.

Furthermore, Ms. Watkins was asked at trial to identify in the video footage the officer who made the offending statement. Although the faces of the officers could not be clearly seen in the video, Ms. Watkins specifically pointed to the legs of an officer who is standing on the right side of the pathway, a couple of feet from where the path meets the sidewalk, and stated that he was the one who made the comment. (CCRB Ex. 1C at 0:46; Tr. 63-67) However, from carefully viewing the remainder of that video, during which time the officers remained in essentially the same positions, it can be seen that the officer identified by Ms. Watkins is *not* Respondent. At the 3:27 mark, Respondent can clearly be seen stepping away from the area and walking beside his sergeant back to their RMP. It is evident from the footage that Respondent was standing further toward the sidewalk than the officer identified by Ms. Watkins at trial. It also is worth noting that at the 0:44 mark, after Ms. Graves already has turned back to voice her displeasure at the officers, another UMOS walks over and appears to address the officer identified by Ms. Watkins in the video, which further suggests that it was this other officer, and not Respondent, who was the focus of Ms. Graves' attention.

Respondent, meanwhile, testified credibly that he did not make the remark or engage Ms. Graves in any conversation. He came across as earnest as he insisted that he would not use the word "nigger" as alleged here. Although Respondent has no specific recollection of the incident, from his review of the video footage and his activity log he concluded that he and his sergeant were at the location at the time in question; they were there for a brief time, there was nothing going on, and so they left. The video confirms that they were only there for about nine minutes before walking off at a leisurely pace.

On the one hand, it appears from the video footage that Ms. Graves did turn to address the police officers at the scene, which supports her claim that something was said that upset her.

However, after carefully considering the testimonial evidence, in conjunction with the video footage, I am not persuaded that Respondent made the offensive comment to Ms. Graves as alleged. The record has failed to establish, by a preponderance of the credible evidence, that Respondent stated to Ms. Graves, "I would have shot that little nigger myself." Accordingly, I find Respondent not guilty of Specification 1.

Specification 2 charges Respondent with making misleading statements during his official interview with the CCRB on January 5, 2021. Specifically, it is alleged that Respondent was intentionally misleading when he repeatedly stated that he did not recall the incident of June 4, 2020. (CCRB Ex. 2 at 6-8, 14) Section 304-10 of the Administrative Guide defines a misleading statement as one that is intended to misdirect the fact finder, and materially alter the narrative, by making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts.

Here, Respondent credibly explained that the events of June 4th occurred during a time period where he was doing 12-hour shifts, for 13 consecutive days, in connection with police protests throughout the city. I credit Respondent's testimony that in this context, this particular incident, one of hundreds of memorials at which he has been present, did not stand out for him. When he was questioned about it seven months later, he genuinely was unable to recall the details of what transpired, even with the aid of video footage. Respondent had no involvement with the shooting of Ms. Graves' brother on June 2nd, and so the reference to that shooting during the CCRB interview did not help him recall the events of June 4th.

The CCRB has the burden of proving, by a preponderance of the credible evidence, that Respondent was being intentionally misleading in his responses during the interview. Under the

specific circumstances presented here, the record did not establish that Respondent was deliberately misdirecting the fact finder with his answers. Accordingly, I find Respondent not guilty of Specification 2.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED



EDWARD A. CABAN
POLICE COMMISSIONER